

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA GARCIA AND ARISTEO GARCIA	§	
Plaintiffs,	§	
	§	
v.	§	CASE NO. 5:17-CV-00704
	§	
ALLSTATE FIRE AND CASUALTY	§	
INSURANCE COMPANY	§	
Defendant.	§	

**DEFENDANT ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY
NOTICE OF REMOVAL**

Defendant, Allstate Fire and Casualty Insurance Company (“Allstate”), hereby removes this lawsuit which is currently pending in the District Court of the 73rd Judicial District of Bexar County, Texas, Cause No. 2017-CI-11447, to the United States District Court for the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1441 and 1446, on the grounds of diversity of citizenship and amount in controversy, and respectfully shows the Court as follows:

**I.
BACKGROUND**

1. On June 22, 2017, Plaintiffs filed their Original Petition styled *Maria Garcia and Aristeo Garcia v. Allstate Fire and Casualty Insurance Company*, in the District Court of the 73rd Judicial District of Bexar County, Texas, Cause No. 2017-CI-11447. Plaintiffs assert various causes of actions arising from claim for damages to their property pursuant to a homeowner’s policy issued by Defendant. *See* Exhibit A (Original Petition).
2. Plaintiffs served Defendant Allstate with Plaintiff’s Original Petition and process on June 28, 2017, by certified mail on its registered agent. *See* Exhibit B.

3. Plaintiffs assert causes of action for breach of contract, violations of the Deceptive Trade Practices Act, violations of the Texas Insurance Code, and breach of common law duty of good faith. *See* Exhibit A. Plaintiff affirmatively pleads for damages “that exceed the sum of \$200,000...” *Id.* at p. 12.

4. Defendant filed its answer to the suit on July 26, 2017, generally denying all claims. *See* Exhibit C (Original Answer).

5. The State Court’s Record Search including Case History for this matter is attached herein. *See* Exhibit D.

II. GROUNDS FOR REMOVAL

6. This Court has original jurisdiction of this suit based on 28 U.S.C. § 1332(a) because this suit involves a controversy between citizens of different states and there is complete diversity between the parties at the time of the filing of the suit and at the time of the removal. Further, the amount in controversy, exclusive of interest and costs exceeds \$75,000.00.

A. Parties are Diverse

7. Plaintiffs, Maria Garcia and Aristeo Garcia, are natural persons who reside in Bexar County, Texas. *See Plaintiffs’ Original Petition*, Exhibit B, p. 1. Plaintiffs have not pled any other facts of their residency, intention to leave Texas, or domiciles in other States. *Id.* Accordingly, Defendant asserts that absent the same, Plaintiffs’ citizenship at the time of the filing of the suit and at the time of removal is properly established as the State of Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011).

8. Defendant, Allstate Fire and Casualty Insurance Company is a foreign corporation incorporated under the laws of the state of Illinois with its principal place of business in Cook County, Illinois. Accordingly, Defendant is a citizen of Illinois.

B. Amount in Controversy

9. The party seeking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. *Grant v. Chevron Phillips Chem. Co. L.P.*, 309 F.3d 864, 868 (5th Cir. 2002). The removing party may satisfy its burden by either (1) demonstrating that it is “facially apparent” from the petition that the claim likely exceeds \$75,000.00, or (2) “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.” *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

10. Here, it is facially apparent from Plaintiffs’ petition that the claim exceeds \$75,000.00. Specifically, under Section IX of Plaintiff’s petition – titled “Statement of Relief and Damages Over \$200,000”, Plaintiffs assert:

The total damages sought by Plaintiffs against Defendant for all elements of damage exceed the sum \$200,000, including exemplary and punitive damages, penalties, attorneys’ fees, interests, and costs.

Plaintiffs’ Original Petition, Exhibit B, p. 12.

11. Based on the foregoing, the amount in controversy exceeds \$75,000.00.

**III.
REMOVAL IS PROCEDURALLY PROPER**

12. This notice of removal is timely filed within thirty (30) after service of process upon Defendant. *See* 28 U.S.C. §1441(b)(1).

13. Venue is proper in this Court under 28 U.S.C. §1441(a) because this District and Division of this Court embraces Bexar County, Texas, the place where the State Court suit was filed.

14. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached herein.

15. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly provide a true and correct copy of this Notice of Removal to Plaintiff and to the Clerk of Bexar County District Court.

WHEREFORE, Defendant Allstate Fire and Casualty Insurance Company requests that the Court accept jurisdiction over this case against them for the reasons set forth above, and grant Defendant any such other and further relief to which they show themselves justly entitled.

Respectfully submitted,

VALDEZ & TREVIÑO

By: /s/ Robert E. Valdez

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served on all parties through counsel of record pursuant to the Federal Rules of Civil Procedure on July 27, 2017, in the manners prescribed below:

Carlos E. Solis
Paul A. Smith, Jr.
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Counsel for Plaintiffs

Via Facsimile: (210) 223-5007

/s/ Robert E. Valdez
Robert E. Valdez